LEGATEES BEHIND THE IRON CURTAIN

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House Bill No. 638, which was signed by the Governor on July 6, 1955, added to the chapter of the Revised Code which deals with the powers of executors and administrators of estates the following new sections:

> §2113.81. Where it appears that a legatee or a distributee, or a beneficiary of a trust not residing within the United States or its territories will not have the benefit or use or control of the money or other property due him from an estate, because of circumstances prevailing at the place of residence of such legatee, distributee, or a beneficiary of a trust, the probate court may direct that such money be paid into the county treasury to be held in trust or the probate court may direct that such money or other property be delivered to a trustee which trustee shall have the same powers and duties provided in Section 2119.03 of the Revised Code for such legatee, beneficiary of a trust or such persons who may thereafter be entitled thereto . . .
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> §2113.82. When a person entitled to money or other property invested or turned into the county treasurer or to a trustee under Section 2113.81 of the Revised Code satisfies the probate court of his right to receive it, the court shall order the county treasurer or the trustee to pay it over to such person.

This statute was the result of uncertainty whether legatees or distributees of an Ohio estate living in countries behind the Iron Curtain would be permitted to receive funds from this country, or whether such funds would be confiscated by their Governments. It was designed to enable the probate judges in this state to prevent such confiscation by depositing these funds in escrow until such time as the beneficiary would be in a position to enjoy their use. It is not a novelty. In fact, its enactment was inspired by a similiar New York statute which was adopted in 1939 upon the recommendation of the Executive Committee of the Surrogates' Association of that state.[1] That statute has been frequently applied by the New York Courts; hence, a brief survey of the New York cases may be helpful.

Since the New York statute was enacted a few months before the outbreak of World War II in Europe, it was invoked in some cases which are no longer of current interest. For instance, it was held that a power of attorney to the German Consul in New York City, executed in Germany in October 1938 by persons of the "Jewish race" was not sufficient to authorize payment to the Consul; the court found that, due

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[1] Section 269, New York Surrogate's Court Act, as amended by L. 1939, ch. 343.

to the official program of racial persecutions carried out by the Nazi Government the money would be subject to confiscation if turned over to the German Consul or his attorney.[2] Subsequently, similar rulings were handed down with respect to applications by foreign Consuls on behalf of their nationals who resided in countries occupied by Germany.[3]

These cases are now a matter of history. However, it is significant that within a few months after its enactment the New York statute was applied to distributees residing in the Soviet Union. In November 1939, the Surrogate of Kings County, in *Matter of Landau's Estate*,[4] directed payment of the money into the City Treasury on the ground that "it is a matter of common knowledge that private ownership of property has been abolished in the Soviet Union, with the result that none of its nationals there resident are permitted by its laws to have the personal control of any property, which is deemed to belong solely to the State." The same result was reached in February 1940 in a more thorough opinion by Surrogate Foley of New York County, in re *Bold's Estate*.[5] Judge Foley, who was generally recognized as the leading authority on the law of estates in New York, heard considerable evidence and argument on the crucial question whether the distributees in Russia would have the "benefit or use or control" of funds which might be sent to them from this country. He found that "there is a form of ownership of certain private property to a restricted degree in the Soviet Union" which may include clothing, household goods, and savings bank deposits." On the other hand, the right of inheritance was confined to descendants of a surviving spouse or to those receiving support from the deceased before his death. Moreover, Judge Foley indicated that in a totalitarian state one had to look to laws in "actual operation." On that score he was convinced by the testimony of two experts with long experience in handling transmission to and receipt of funds in Russia; one thought that only the equivalent of $30 out of a total distributive share of $1500 would be paid to the legatees, while the balance would be confiscated; the other estimated that the legatees would receive $300, or 20% of what was due to them.

A complete reversal of these decisions occurred in May, 1945. At

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[2] In re Weidberg's Estate, 172 Misc. 524, 15 N.Y.S. 2d 252 (Surr. Ct., Kings Co., 1939). However, the same court, in November 1939, saw no reason to deny a similar application by the Italian Consul on behalf of an Italian national: In re Blasi's Estate, 172 Misc. 587, 15 N.Y.S. 2d 682. See, also, In re Muckl's Estate, 174 Misc. 35, 19 N.Y.S. 2d 1009 (Surr. Ct., Erie Co., 1940).

[3] In re Steiner's Estate, 172 Misc. 950, 16 N.Y.S. 2d 613 (Surr. Ct., Bronx Co., 1939); In re Bamberg's Estate, 174 Misc. 306, 20 N.Y.S. 2d 619 (Surr. Ct., Kings Co., 1940); In re Zalewski's Estate, 177 Misc. 384, 30 N.Y.S. 2d 658 (Surr. Ct., Kings Co., 1941); In re Skewry's Will, 33 N.Y.S. 2d 610 (Surr. Ct., Westchester Co., 1942); In re Miller's Estate, 181 Misc. 88, 45 N.Y.S. 2d 485 (Surr. Ct., N.Y. Co., 1943); In re Van Dam's Estate, 43 N.Y.S. 2d 184 (Surr. Ct., N.Y. Co., 1943).

[4] 172 Misc. 651, 16 N.Y.S. 2d 3.

[5] 173 Misc. 545, 18 N.Y.S. 2d 291.

that time the Public Administrator of New York County applied to Surrogate Foley for permission to withdraw from the City Treasury funds previously deposited to the credit of Soviet citizens and to transmit them through their attorney in fact. This permission was granted on two grounds: Submission of a formal certificate by the Russian Ambassador to the United States that the legatees now have the full benefit of such funds, and the promulgation on March 15, 1945 of a new Russian law of inheritance which broadened the class of heirs and legatees and the types of property subject to inheritance.[6]

A third ground for the release of the funds at that time was not judicially noticed nor otherwise mentioned: In May 1945, the month of Germany's surrender to the victorious Allies, American-Russian relations were at their peak of good will and cooperation; hence, it seemed plausible that there would be no interference with the "actual operation" of the new inheritance law for the benefit of individuals in Russia who inherited money from the United States.

As everybody knows, subsequent events destroyed this hopeful picture. In fact, on February 27, 1951 the Secretary of the Treasury made an official determination "that postal, transportation, or banking facilities in general or local conditions in Albania, Bulgaria, Communist-controlled China, Czechoslovakia, Estonia, Hungary, Latvia, Lithuania, Poland, Rumania, the Union of Soviet Socialist Republics, the Russian Zone of Occupation of Germany, and the Russian Sector of Occupation of Berlin, Germany are such that there is not a reasonable assurance that a payee in those areas will actually receive checks or warrants drawn against funds of the United States, or agencies and instrumentalities thereof, and be able to negotiate the same for full value."[7] Although this pronouncement by the Secretary, which has not been revoked at the time this goes to press, related only to remittances of Government funds, it was cited by the New York courts in numerous decisions handed down from 1951 to 1954 as requiring deposit with City or County Treasurers of the distributive shares of residents of those areas coming to them from New York estates;[8] indeed, the highest court of New York explicitly

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[6] In re Alexandroff's Estate, 61 N.Y.S. 2d 866 (Surr. Ct., N.Y. Co., 1945); In re Adzericha's Estate, 61 N.Y.S. 2d 867 (Surr. Ct., N.Y. Co., 1945); In re Landau's Estate, 187 Misc. 925, 66 N.Y.S. 2d 16 (Surr. Ct., Kings Co., 1946). See Gsovski: Soviet Civil Law, Vol. I, pp. 633-658 (Michigan Legal Studies, 1948).

[7] 31 C.F.R. §211.3; 16 F.R. 1818, 3479.

[8] *Russian residents:* In re Best's Estate, 200 Misc. 332, 107 N.Y.S. 2d 224 (Surr. Ct., N.Y. Co., 1951); In re Braunstein's Estate, 114 N.Y.S. 2d 280 (Surr. Ct., N.Y. Co., 1952); *Russian Zone of Germany:* In re Geffen's Estate, 104 N.Y.S. 2d 490 (Surr. Ct., Bronx Co., 1951); In re Thomae's Estate, 105 N.Y.S. 2d 844 (Surr. Ct., N.Y. Co., 1951); In re Perlinsky's Estate, 115 N.Y.S. 2d 549 (Surr. Ct., Kings Co., 1952): Instrument by distributee in Russian Sector of Berlin assigning her share of New York estate to her sisters in Belgium and New York not recognized in absence of showing that assignment was voluntary and not part of a scheme to secure ultimate transmission of funds. To same effect: In re Mark's

approved the inference that the findings of the U. S. Treasury Department applied not only to transmission of public, but also of private funds.[9]

There is little doubt that these cases will be considered highly persuasive in the interpretation and administration of the Ohio Statute. They indicate that this legislation was designed to protect the right of individuals who are entitled to receive moneys from a decedent in this State; by the same token, they seek to prevent subversion of our local inheritance laws through total or partial confiscation by certain foreign governments. In administering these statutes state courts will necessarily be influenced by findings of federal authorities in the field of foreign relations as to conditions prevailing in the countries of the Communist world. In any event, the burden of proof that conditions in those areas do not require deposit in escrow here is on the applicant, particularly so long as the U. S. Treasury declaration quoted above remains in effect.

Perhaps, modification or revocation of that document in the not too distant future may become possible if efforts to increase and normalize

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Estate, 115 N.Y.S. 2d 174 (Surr. Ct., Kings Co., 1952); In re Miller's Estate, 115 N.Y.S. 2d 255, 257 (Surr. Ct., Monroe County, 1952): Court requires showing that distributees may be able to receive their share. *Czechoslovakia:* In re Bondy's Estate, 118 N.Y.S. 2d 93 (Surr. Ct., N.Y. Co., 1952); In re Klein's Estate, 203 Misc. 762, 123 N.Y.S. 2d 866 (Surr. Ct., Saratoga Co., 1952): Stresses Treasury declaration and absence of testimony as to conditions in Czechoslovakia. In re Wells' Estate, 204 Misc. 975, 126 N.Y.S. 2d 441, 447-449, (Surr. Ct., N.Y. Co., 1953): Held that even if legatees were permitted to receive some money, rate of exchange imposed by their governments was confiscatory. *Poland:* In re Grossman's Will, 204 Misc. 1066, 126 N.Y.S. 2d 835 (Surr. Ct., Kings Co., 1953): Consul Generals of Poland and U.S.S.R. consented to stipulation for deposit with City Treasury. *Lithuania:* In re Lauraiti's Estate, 134 N.Y.S. 2d 907 (Surr. Ct., Kings Co., 1954); *Hungary:* Matter of Braier, 305 N.Y. 148, 157, 111 N.E. 2d 424 (1953): Statute designed to give effect to will of testator, and to protect property of legatees, hence, it is outside scope of Federal law; reliance on Treasury Department declaration by Surrogate approved; blocking of funds in this country by Treasury immaterial for purposes of this statute, since blocking may be lifted without assurance that distributees will receive the funds. In re Siegler's Will, 284 App. Div. 436, 132 N.Y.S. 2d 392 (3rd Dept., 1954): Surrogate not bound in these abnormal times to accept certificate from Hungarian Minister to the United States that nationals will receive money, when declaration by U. S. Treasury indicated improbability of check drawn on Government or private account to reach Hungarian payees. *Chinese Mainland:* 107 N.Y.S. 2d 221 (Surr. Ct., N.Y. Co., 1951), and In re Wong Hoen's Estate, 199 Misc. 1119, 107 N.Y.S. 2d 407 (Surr. Ct., Kings Co., 1951): Application of Consul General of Nationalist China for funds of estate denied in absence of proof that Consul would be able to transmit funds to distributees on mainland and that distributees would retain moneys. *Estonia:* In re Niggol's Estate, 115 N.Y.S. 2d 557 (Surr. Ct., Suffolk Co., 1952): Estonian Consul not permitted to withdraw funds belonging to Estonian nationals residing in Estonia.

[9] Matter of Braier, *supra,* note 8: "Nor may the finding be limited to Government checks or notes, for a check drawn on Government funds would be no less likely to reach an Hungarian payee than would a draft on any private account."

East-West contacts should be successful. Establishment of a reasonable rate of currency exchange would, of course, be an indispensable prerequisite for such action.[10]

[10] "The official exchange rates between local currency and American dollars in Iron Curtain countries is so unrealistic that you would have to be a millionaire to travel there on that basis." Schwartz: Touring Russia, New York Times, Nov. 13, 1955, x25, discussing the recent removal of passport bans for visits to Russia by the U. S. Department of State.